



## **Case Summary**

Jason Gates appeals the jury's verdict in favor of Peter Leadstrom on Leadstrom's complaint for civil conversion. We affirm.

## **Issue**

Gates raises two issues, which we consolidate and restate as whether there is sufficient evidence to support the jury's verdict in favor of Leadstrom on his claim of conversion.

## **Facts**

In January 2002, Leadstrom approached Gates regarding the purchase of Industrial Piping and Engineering, LLC, ("IPE"). To obtain financing, Gates told Leadstrom they would create a limited liability company to purchase IPE. Based on his discussions with Gates, Leadstrom believed Leadstrom would have a 40% interest in the company and a 50% interest in the real estate owned by IPE. Leadstrom was to contribute \$35,000 and his expertise as an engineer. Leadstrom would act as president, and Gates would serve as CEO.

In the spring of 2002, pursuant to Gates's instruction, Leadstrom transferred \$10,000 and another \$25,000 to an account owned by Graber Investments, LLC ("Graber"). In July 2002, Gates closed on the purchase of the company. Leadstrom served as president until May 18, 2004, when Gates fired him. On June 14, 2004, Leadstrom requested a settlement of \$500,000. Gates rejected this offer, and IPE subsequently filed for bankruptcy protection.

On July 29, 2004, Leadstrom filed a complaint alleging breach of contract, theft, and conversion. After a trial, a jury found in favor of Gates on the breach of contract and theft claims and in favor of Leadstrom on the conversion claim. Gates now appeals.

### **Analysis<sup>1</sup>**

Gates argues that there is insufficient evidence to support the jury's finding in favor of Leadstrom on Leadstrom's claim of civil conversion. "Our standard of review of sufficiency of the evidence is the same in civil cases as in criminal cases." Indian Trucking v. Harber, 752 N.E.2d 168, 172 (Ind. Ct. App. 2001). We consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom. Id. We neither reweigh the evidence nor judge the credibility of the witnesses. Id.

Under Indiana Code Section 34-24-3-1, a person who proves the elements of criminal conversion by a preponderance of the evidence may recover up to three times the actual damages, the costs of the action, and reasonable attorney's fees. Greco v. KMA Auto Exchange, Inc., 765 N.E.2d 140, 147 (Ind. Ct. App. 2002). A person who knowingly or intentionally exerts unauthorized control over property of another person commits Class A misdemeanor criminal conversion. Ind. Code §35-43-4-3.

A person acts intentionally if he or she engages in the conduct with the conscious objective to do so. I.C. § 35-41-2-2(a). A person engages in conduct knowingly if he or she is aware of a high probability that he or she is doing so. I.C. § 35-41-2-2(b). Indiana

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<sup>1</sup> Gates did not file an appendix. Items other than the transcript of the trial, including for example the complaint, might be helpful or even essential to our review. We remind Gates that pursuant to Indiana Appellate Rule 49(A), he was required to file an appendix. We also remind the parties that pursuant to Indiana Appellate Rule 67, when a judgment is affirmed in whole, the appellee shall recover costs, including the cost of preparing the appendices.

Code Section 35-43-4-1(a) provides that to “‘exert control over property’ means to obtain, take, carry, drive, lead away, conceal, abandon, sell, convey, encumber, or possess property, or to secure, transfer, or extend a right to property.” Finally, a person’s control over another person’s property is unauthorized if it is exerted by creating or confirming a false impression in the other person or by promising performance that the person knows will not be performed. I.C. § 35-43-4-1(b)(4) & (6).<sup>2</sup>

Here, Leadstrom testified that in the spring of 2002 he transferred \$35,000 to the Graber account based on Gates’s directive. Leadstrom stated that he and Gates had discussed Leadstrom “buying into the company.” Tr. p. 64. Gates instructed Leadstrom to deposit the money in exchange for Leadstrom’s share of the business, and Leadstrom did so with that understanding. Despite Leadstrom’s contributions, he never received any ownership interest in IPE.

Although Leadstrom deposited the money in the Graber account, he did so at Gates’s instruction. Gates is the only signatory on the Graber account. Further, Gates withdrew \$10,000 from the Graber account within seven days of Leadstrom’s initial deposit, and within three weeks of the \$25,000 deposit, Gates had withdrawn that amount from the Graber account. Graber testified that he was using the funds from the Graber account any way he wanted because he had the “full right” to do so. Id. at 129. Gates also stated the money in the Graber account did not have anything to do with IPE. See id. at 130.

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<sup>2</sup> Although the statutory definition of “unauthorized” includes more examples, this definition is consistent with the instructions issued to the jury in this case.

Leadstrom deposited the money to the Graber account, over which Gates had control, without receiving any interest in IPE as the parties had discussed. This evidence is sufficient to show that Gates knowingly or intentionally exerted unauthorized control over Leadstrom's property. Gates argues that because IPE is bankrupt, he could not convert something that is worthless and that Leadstrom gave Gates the money in exchange for his job as president of IPE. These arguments, however, are simply requests to reweigh the evidence. We must decline these requests.

### **Conclusion**

There is sufficient evidence to support the jury's verdict in favor of Leadstrom on his complaint for conversion. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.